

### **REMARKS**

Claims 1-13 are now pending in the present application. Claims 1-12 have been allowed. Claim 13 has been amended. The present Response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of this application are respectfully requested. No new matter has been added by any of the amendments to the specification. Applicant respectfully requests reconsideration and withdrawal of the Examiner's rejections in view of the foregoing amendments and following remarks.

### **CLAIM REJECTIONS – 35 U.S.C. § 102**

#### **Claims 13**

The Examiner rejected claim 13 under 35 U.S.C. §102(b), as being anticipated by Keller (U.S. Patent No. 4,869,911). The Examiner has stated that:

Keller ['911] shows the product set forth in claim 13. Alternatively, it is not seen that the claim defines an unobvious new product over the product of Keller. The Examiner's position is that irrespective of the process by which the product is made, the claimed product is still a crisp, expanded, farinaceous food product with distinct cross-sectional pattern in the form of a "C" (column 5, line 31), a lack of drying (column 2, line 19), and having a moisture content from about 4 weight percent to about 8 weight percent and a water activity of from about 0.30 to about 0.45; and such a product is shown by Keller. It is well settled that the recitation that the product is made by a new process, if the process was indeed new and patentable, does not impart patentability to an otherwise unpatentable product. The burden is upon the applicants to come forward with evidence to prove that the prior art product does not necessarily or inherently possess the characteristics of the claimed product.

This rejection is respectfully traversed. Examiner references the product disclosed in the Keller '911 patent, which has a distinctive cross-sectional shape or pattern in the form of a "C". In contrast, the product claimed in the subject invention is a food product of any shape, which has imparted therein (*i.e.*, within the cross-section of the food piece) a distinctive cross-sectional pattern which has enhanced flavor characteristics. Claim 13 has been amended to clarify this distinction between Keller '911 and the subject invention. Support for the claim amendment is found at page 22, line 24 *et seq.* of the specification. The Keller '911 patent does not disclose a food product having a distinctive cross-sectional pattern of enhanced flavor imparted within the

food piece as claimed in amended Claim 13. Therefore, Applicants respectfully request reconsideration and withdrawal of the Examiner's rejection based upon 35 U.S.C. § 102 with regard to the Keller '911 patent.

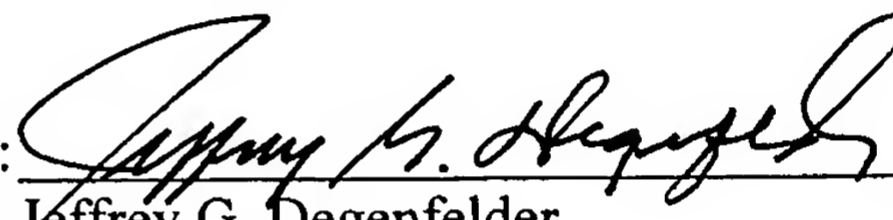


### CONCLUSION

Applicants believe the claims are in condition for allowance. It is respectfully urged that the subject application is patentable over references cited by Examiner and is now in condition for allowance. Applicants request consideration of the application and allowance of the claims. If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact Jeffrey G. Degenfelder at 972.367.2001.

The Commissioner is hereby authorized to charge any additional payments that may be due for additional claims to Deposit Account 50-0392.

Respectfully submitted,

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